

No. 8;

1634: *January 23.* EARL OF MARR *against* HIS VASSALS.

IN the action of reduction of the Earl of Marr against Vassals, *alleged* by one Duguid of Auchinhove, That he and his predecessors had been infeft in his lands holding by the King, for the space of 200 years, which lands were designed to lie in the sheriffdom of Aberdeen only, but not within the earldom of Marr, or Lordship of Garioch; *replied*, He offered to prove them parts and pendicles of the earldom of Marr; which reply the LORDS sustained to be proven by public and authentic writs and evidents, with this declaration, That for proving thereof, they would not think the Exchequer rolls sufficient alone, except the pursuer proved it by other evidents beside.

Spottiswood, p. 226.

No 9.

1638. *December 11.* L. TUSHELAW *against* SIR JOHN SCOT.

IN a removing sought from some lands, which the defender *alleged* to be part and pertinent of the lands of _____ pertaining to him heritably, and which have ever been so bruiked by him these many years bypast; and which the pursuer *alleged* also to be bruiked by him continually as part and pertinent of his lands; the LORDS admitted to both the parties to prove, and ordained either of them to adduce six witnesses to prove the same, and after examination of the witnesses, they decerned to remove in favours of the pursuer, who proved clearly, that it was a part of his lands, except some little peice thereof, which was proven to be a part of the defenders lands, and so here contrary probations were admitted to both parties.

Act. *Hope and Advocatus.* Alt. *Nicolson and Burnet.* Clerk, *Gibson.**Durie, v. 2. p. 866.*1662. *January 30.* LORD BURLY *against* JOHN SIME.

No 10.
Goals found to be carried by the common clause of pertinents, against one expressly infeft in the coal-heughs of the lands.

THE Lord Burly pursues John Sime for intruding himself in a coal-heugh, wherein the pursuer's author was infeft severally, and not in the land, but only in the coal, with power to set down pits through all the bounds of the land. The defender *alleged* absolvitor, because he stood infeft in the lands libelled, with parts and pertinents, and by virtue thereof, was seven years in possession, which must defend him in possession, until his right be reduced. The pursuer *answered*, That the defender could have no benefit of a possessory judgment, not being expressly infeft with the benefit of the coal, in prejudice of the pursuer, who was expressly infeft, and seased in the coal, and in possession of the